IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 24, 2008

MICHELLE CAROL LANGFORD v. DAN B. LANGFORD

Appeal from the Chancery Court for Bedford County
No. 26,795 J.B. Cox, Chancellor

No. M2007-01275-COA-R3-CV - Filed September 23, 2008

Father appeals the amount of child support set by the trial court in a default judgment of divorce. Father was ordered to pay support in the amount of $581 per month. Father is incarcerated and argues it was error for the court to base the amount of child support on his pre-conviction earning capacity. Finding the evidence in the record does not preponderate against the trial court's findings, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Dan B. Langford, II, Only, Tennessee, Pro Se.

Megan A. Kingree, Shelbyville, Tennessee, for the appellee, Michelle Carol Langford.

OPINION

I.

Dan B. Langford, II ("Father") and Michelle Carol Langford ("Mother") were married on December 4, 1999. The Langfords have one minor child, D.L., born on August 2, 2000. Both Father and Mother have children from previous relationships. In 2005, Father was arrested on felony charges and was later sentenced to serve 20 years in prison. Father has been incarcerated since December 21, 2005.

On April 4, 2007, Mother filed for divorce based on the following grounds: Father's felony conviction and prison sentence pursuant to Tenn. Code Ann. § 36-4-101(a)(6) and inappropriate marital conduct pursuant to Tenn. Code Ann. § 36-4-101(a)(11). Mother also filed a temporary parenting plan naming her as the primary residential parent with no parenting time for Father due to his incarceration. Father was served with the summons and complaint on or about April 6, 2007.

On May 7, 2007, counsel for Mother sent Father a notice of the hearing before the Chancery Court for Bedford County scheduled for May 18, 2007, and her intent to seek a default judgment on the complaint for divorce. Father did not file an answer or response to Mother's complaint or hearing notice. Following the hearing, the trial court entered a default judgment against Father granting Mother a divorce. By judgment entered May 18, 2007, the court awarded Mother all the marital property, both personal and real, and ordered the parties be responsible for the debts in their respective names. In the permanent parenting plan, Mother was named the primary residential parent and the court ordered Father to pay Mother child support for D.L. in the amount of $581 per month. Father was not awarded parenting time. The child support worksheet lists Father's gross monthly income as $3,030.75 and Mother's gross monthly income as $2,119,15. Father's income was based on his earnings prior to his arrest and imprisonment. Father appeals the order of child support arguing the court erred in calculating Father's obligation based on his earning capacity before he was imprisoned.

II.

Our review of the trial court's findings of fact is de novo upon the record, accompanied by a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Chaffin v. Ellis*, 211 S.W.3d 264, 285 (Tenn. Ct. App. 2006). A trial court's conclusions of law are reviewed de novo with no presumption of correctness. *Id*. The appellant has the duty to prepare the record to convey a fair, accurate, and complete account of what transpired in the trial court from which we can determine whether the evidence preponderates for or against the findings of the trial court. *In re M.L.D.*, 182 S.W.3d 890, 894-95 (Tenn. Ct. App. 2005); Tenn. R. App. P. 24.

Father has chosen to represent himself in the instant action and, while entitled to fair and equal treatment before the courts, he is still required to comply with substantive and procedural law as do parties represented by counsel. *See Hodges v. Attorney General*, 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000). There is no transcript of the proceedings or statement of the evidence in the appellate record as required by Tenn. R. App. P. 24. "When no transcript or statement of the evidence is included in the record on appeal, we conclusively presume that the findings of fact made by the trial court are supported by the evidence and are correct." *In re M.L.D.*, 182 S.W.3d at 894.

III.

Father argues there was insufficient evidence of his income at the time of divorce to warrant the child support obligation set by the trial court. Father makes a number of factual assertions that are not supported by the evidence in the record and therefore cannot be considered by this court. As there is no transcript or statement of the evidence, we are limited to consideration of the default judgment of the court which states that, based on "the proof adduced in open Court," the court found the facts set forth in Mother's complaint to be true. Absent evidence to the contrary, we must presume the record supports the court's finding that Father's gross monthly income was $3,030.75 for purposes of calculating Father's child support obligation under the child support guidelines.

It is well-settled in Tennessee that parents have an equal and independent legal obligation to support their minor children. Tenn. Code Ann. § 34-1-102(a); *Kirkpatrick v. O'Neal*, 197 S.W.3d 674, 679 (Tenn. 2006). Father's imprisonment does not automatically work to terminate his duty to support D.L. Because we must conclusively presume the record and proof support the trial court's findings of fact in the absence of a transcript or statement of evidence, the judgment of the trial court is affirmed. Costs of appeal are assessed against the appellant, Dan B. Langford, II, for which execution shall issue if necessary.

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ANDY D. BENNETT, JUDGE